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AICPA *Washington Report*

August 3, 1987, Volume XVI, Issue 23

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SECURITIES AND EXCHANGE COMMISSION

Competition among potential vendors of the proposed electronic filing system (EDGAR) will be reopened for 90 days, according to a recent announcement by the SEC. According to the notice, the Commission has agreed to implement a recommendation by the General Accounting Office that the full cost of the portion of the EDGAR system that receives filings be borne by the Commission. The SEC said it would soon issue an amendment to the Request for Proposals, which will formally reflect its decision. Further consideration of existing bids, the Commission notice stated, will be deferred until any additional interested parties have had an opportunity to submit proposals. For further information please contact SEC EDGAR Project Manager John Penhollow at 202-272-2700.

TREASURY, DEPARTMENT OF

Changes to the model amendment for master and prototype employee plans have been announced by the IRS. The IRS said the changes have been made in response to public comments and that the new features "will make the model cash or deferred arrangement—or CODA—more versatile and attractive to sponsoring organizations." The announced changes modify the model amendment published in Internal Revenue Bulletin 1987-18, dated 5/4/87. One of the new features adds model CODA provisions for hardship distributions of elective deferrals in cases of financial need. Another new feature allows sponsors of master and prototype plans to offer plan provisions that permit the use of qualified employer matching contributions to meet the anti-discrimination test required for qualified CODAs. The changes were announced in Notice 87-51, which will be published in Internal Revenue Bulletin 1987-31, dated 8/3/87.

Proposed corporate alternative minimum tax book income regulations will be the subject of a public hearing 9/1/87 (see the 7/28/87 Fed. Reg., p. 28162). The hearing will examine the proposed regulations relating to the corporate alternative minimum tax book income adjustment and the payment of estimated tax by corporations taking into account the alternative minimum tax and the environment tax. The proposed regulations were published in the 4/28/87 Fed. Reg., pp. 15305-20 (see the 4/27/87 Wash. Rpt.). The hearing will begin at 10:00 a.m. in the IRS Auditorium, 1111 Constitution Avenue, N.W., Washington, D.C. Requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-107-86), Washington, D.C. 20224. Outlines of oral comments must be delivered or mailed by 8/18/87. For further information after reading the notice, please contact Angela D. Wilburn at the IRS at 202/566-3935.

The Commissioner's Exempt Organization Advisory Group will hold its first meeting 9/16/87. Donald C. Alexander, former IRS commissioner, will serve as the group's chairman, according to the IRS announcement. Items for discussion on the agenda include the following: 1) Issues contained in proposed regulations under section 501(h), relating to lobbying by public charities, and alternative approaches; 2) Administrative problems of unrelated business income tax compliance and reporting, and ways to help solve them; 3) Internal Revenue Code provisions relating to churches and a determination of the proper role of the IRS in interpreting and administering them; 4) The status of proposed legislation affecting lobbying and political activities of charitable organizations; and 5) Future meetings and agenda topics. The meeting is open to the public and written comments from the public will also be accepted by the IRS for consideration as discussion items. To be considered, the comments should relate to the announced agenda topics, the IRS said. The comments should not exceed two double-spaced pages and should be sent by 8/14/87 to the Assistant Commissioner (Employee Plans and Exempt Organizations), Attn: EOCAG, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. The Advisory Group will meet from 1 to 5:30 p.m. on 9/16/87 and from 9 a.m. to 3 p.m. on 9/17/87 in Room M-09 at the Old Post Office Building (The Pavilion), located at 12th Street and Pennsylvania Avenue, N.W., Washington, D.C.

TREASURY, DEPARTMENT OF

Required distributions from qualified plans and individual retirement plans are the subject of proposed regulations issued recently by the IRS (see the 7/27/87 Fed. Reg., pp. 28070-28110). The IRS said the notice is intended to provide the public with the guidance necessary to comply with changes made by the Tax Reform Act of 1986, the Tax Reform Act of 1984, and the Tax Equity and Fiscal Responsibility Act of 1982. According to the IRS, the regulations will affect 1) administrators of, participants in, and beneficiaries of qualified plans; 2) institutions which sponsor and individuals who administer individual retirement plans; 3) individuals who use individual retirement plans and simplified employee pensions for retirement income and beneficiaries of individual retirement plans; and 4) employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts and beneficiaries of such contracts and accounts. The proposed regulations, which are in question and answer format, provide a basic description of required minimum distribution rules. The IRS notes that the amendments are generally applicable to calendar years beginning after 12/31/84, except as otherwise specified in the applicable Act. Comments and requests for a public hearing must be received by 9/25/87. If further information is needed after reading the proposed regulations please contact Marjorie Hoffman at the IRS at 202/566-3903.

SPECIAL: HOUSE SUBCOMMITTEE HEARS MORE TESTIMONY ABOUT TREADWAY COMMISSION REPORT

"The real key to preventing, detecting, and reporting financial fraud is an effective system of internal controls run by dedicated and able people," stated Energy and Commerce Subcommittee on Oversight and Investigations Chairman John D. Dingell (D-MI) as the Subcommittee completed its efforts to hear from all the sponsors of the National Commission on Fraudulent Financial Reporting about its exposure draft. Testifying at the 7/27/87 hearing were representatives from the Institute of Internal Auditors (IIA), the Financial Executives Institute (FEI), and the National Association of Accountants (NAA). Chairman Dingell noted that the witnesses "represent accountants, auditors, and financial officers who work inside corporations." These individuals "face extreme difficulties," Rep. Dingell said, "because they are often placed in the position of auditing and reporting on problems created by their bosses." Each of the three organizations testifying at the hearing stated their support for the Commission's goals and objectives and for the overall thrust of the Commission's recommendations, while offering various comments on the specific proposals. The NAA, represented by W.K. Ihlanfeldt, chairman of the NAA Accounting Practices Committee, said his organization believes the final form of each recommendation should "stand the test of a cost-effective improvement." In regard to the Commission's recommendation concerning opinion shopping, Mr. Ihlanfeldt said, only if company management seeks a second formal opinion on a significant accounting issue and then chooses to rely on that opinion, in a disagreement with its primary auditors, should the matter be brought to the attention of the audit committee. Mr. Ihlanfeldt noted that certain recommendations regarding audit committees "fail to recognize that there is a difference between an oversight role and direct involvement in the financial reporting process," and observed that requiring audit committees to approve quarterly financial results prior to their release is "troublesome" and may "inhibit the timely flow of information to the public." Mr. Robert W. Moore, president of the FEI, also commented on the role of the audit committee, urging that it "not have primary responsibility for the accuracy and integrity of financial reports." This is not a workable approach, the FEI representative said, as it would "alter the audit committee's responsibility for oversight and actively involve the committee in day-to-day operations of the company." Mr. Moore also said his organization opposed "legislative efforts" to eliminate or prevent fraud, noting that any such effort would fail "because you cannot legislate human behavior." The principal mechanism for the deterrence and detection of fraud is "control," according to Ronald Bell, chairman of the IIA, and management has the "primary responsibility" for developing and implementing needed internal controls. Mr. Bell testified that a "good working relationship" between the audit committee

and internal auditors is essential for an effective program to deter and detect fraudulent activities. "For this reason," he concluded, "any regulations issued on audit committees should directly cover their oversight activities for, and direct communication with, the internal audit function."

SPECIAL: RICO REFORM LEGISLATION INTRODUCED IN HOUSE AND SENATE

Legislation designed to reform the civil provisions of the Racketeer Influenced and Corrupt Organizations (RICO) statute was introduced in both houses of Congress 7/22/87. Rep. Rick Boucher (D-VA) introduced H.R. 2983 in the House and Sen. Howard Metzenbaum (D-OH) introduced S. 1523 in the Senate. Both bills are modeled on H.R. 5445, the bill that last Congress passed the House overwhelmingly and which was narrowly defeated in the Senate. H.R. 2983 would limit automatic treble damages, now available to any plaintiff, to suits brought on behalf of governmental entities and suits in which the defendant already has been convicted criminally for his conduct. "Consumers" for whom the securities laws do not provide a remedy could sue for single damages plus punitive damages of up to double actual damages, based on the egregiousness of the defendant's conduct. Other plaintiffs would be limited to single damages. The limitation to single damages would apply to most pending cases. Rep. Boucher's bill also would eliminate the pejorative term "racketeer" from the statute, create a three-year statute of limitations, heighten the pleading requirements, and authorize awards of attorney's fees against plaintiffs who bring frivolous cases under the statute. S. 1523, while similar to H.R. 2983, differs with the House bill in several critical respects. Most importantly, it would permit a large class of RICO plaintiffs—called "small investors" in the bill—to continue to sue for multiple damages even if they have remedies for their claims under the securities laws. Therefore, virtually all securities-related class-action RICO cases would remain, and the bill in effect would endorse the use of RICO in litigation arising from securities transactions. This provision, along with the definition of "security" that Sen. Metzenbaum proposes, makes the Senate bill fatally flawed for the accounting profession.

For further information contact Shirley Twillman or Joseph Petito at 202/737-6600.

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